of a tenant is determined then any sub-tenant of his becomes the tenant of the landlord. That sub-section is as follows :—

> Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.

There are no such express provisions in our Rent and Charged Land (Restriction) Enactment, 1940, therefore one must construe that Enactment (bearing in mind that its intention is to protect tenants who fufil their obligations to their landlords) to see if sub-tenants, in a case such as this, are protected.

In the Rent and Charged Land (Restriction) Enactment, 1940, "landlord" includes only those persons who would be entitled to possession of premises (which also includes any part of premises) but for the existence of the Enactment. As I stated in the case of *P. V. A. Athimoolam Chettiar v. S. A. Athamsah and Company*[4] :—

> Now if an owner of a dwelling-house lets the whole of that house to a tenant, he, the owner, is out of possession and is clearly the landlord of that tenant. If the tenant sub-lets to another person the ground floor of those premises, retaining for his own use the first floor, then the tenant is out of possession of the ground floor, because it would be in the possession of that other person, and therefore, according to the definition of 'landlord' in the Enactment, the tenant would be the landlord of the person to whom he had let the ground floor and who was actually in possession of the ground floor. This could be taken further if the person in possession of the ground floor, who is really the sub-tenant, further sub-let one or more rooms on the ground floor.

Applying that statement to the present case (it is not disputed that the first defendant, as the principal tenant had power to sub-let to the third and fourth defendants) the position is :—

(a) The plaintiffs, as owners of the house in question, let the whole house to the first defendant. They, the plaintiffs are out of possession and clearly the landlord of the first defendant.

(b) The first defendant retained for his own use the ground floor of the house and sub-let :—

(i) The first floor to the third defendant,

(ii) The second floor to the fourth defendant.

Therefore the first defendant is out of possession of the first and second floors of the house and is clearly the landlord of the third defendant and also of the fourth defendant.

Now, bearing in mind that by section 3 of the Enactment "tenant" includes "sub-tenant", and also the definition of landlord referred to above, what happens when the tenancy of the first defendant is terminated? The third and fourth defendants, who have not been in arrears with their rent, still remain in possession on the first and second floors of the house.

The plaintiffs, the owners of the house, enter into possession of the ground floor because their tenant, the first defendant, goes out of possession, his tenancy having been lawfully terminated. But the plaintiffs are still out of possession of the first and second floors, though they would be entitled to possession of them but for the existence of the Enactment. This is clear from the definition of "landlord" in section 3 of the Enactment. Accordingly, from that state of affairs and from that definition, there is created, after the determination of the first defendant's tenancy, the relationship of landlord and tenant between the plaintiffs, on the one hand, and the third and fourth defendants, on the other hand, in respect of the first and second floors of the house. Accordingly the third and fourth defendants are not trespassers. Further, since they have never been fourteen days in arrear with their rent their tenancies cannot be terminated without the permission of the Rent Assessment Board.

Question No. 3 :—

In view of my answer to question No. 2, this third question does not arise.

In accordance with the provisions of section 573 of the Civil Procedure Code, I direct that a copy of this judgment, under the signature of the Registrar, Supreme Court, be transmitted to the District Judge, Selangor, and that on receipt thereof the District Judge shall proceed to dispose of the case in accordance with this judgment.

Before me all parties indicated that there should be no order as to costs on this reference, and no doubt the District Judge will bear this in mind when he comes to adjudicate finally on this matter.

Order Accordingly.

PUBLIC PROSECUTOR v. GOVINDAN KURUP AND 2 OTHERS.

[Orig. Crim. Juris. (Laville, J.) February 6, 1947]

Firearms and Ammunition (Unlawful Possession) Ordinance, 1946, Section 3,—Possession of pistol—Meaning of "possession"—Person to be in possession must have power to deal with thing as owner to the exclusion of all others.

The evidence in this case showed that accused No. 1 negotiated for the sale of a pistol to a Dectective Police Constable and that he arranged for its production at the scene of delivery, handled the weapon there, delivered it to the Detective Police Constable and received from him $300/- which he kept exclusively to himself as the price thereof. The evidence also showed that accused No. 2 received a bundle containing the pistol and handed the bundle to accused No. 3, who actually handed it to the Dectecive Police Constable. The accused were all charged with possession of the pistol under Section 3 of the Firearms and Ammunition (Unlawful Possession) Ordinance.

Held, (1) that in order to make possession of anything criminal there must be consciousness on the part of the accused that he is in possession of the prohibited article, unless it is explicitly stated that mere possession without knowledge is an offence and that as there was no evidence that accused No. 2 knew that the pistol was concealed in the bundle and as his handling was of so remote and fleeting nature as to exclude the idea of criminality, he cannot be convicted of the offence of possession under the Ordinance; (2) that the "possession" of the 3rd accused also was so remote from the intention of the Ordinance and so fleeting that it should be considered rather as handling than possession and cannot import any criminality; (3) that it was clear that accused No. 1 was so situated with regard to the pistol that he had the power to deal with it by negotiating a sale of it and that he was therefore in possession of the pistol.

CRIMINAL TRIAL.

W. Martin Mc Call for the Public Prosecutor.

Accused in person.

Laville, J. : — In this case the sole evidence of possession is that of DPC 23 Ang Chiong Boo. The pistol (Ex. A.) was obtained as a result of a pre-arranged purchase for $300. This money he received from O/C Detectives after a note had been made of the currency numbers. These notes were subsequently recovered from accused No. 1 after his arrest.

DPC 23's story of the pre-arranged sale is supported by Jaafar b. Maridan O/C Detectives Johore Bahru, as also the fact of the recovery of the $300 from the person of accused No. 1. Sgt. 608 supports DPC 23's contact with accused No. 1 in Pandan village prior to the sale.

The story of the presence of accused No. 2 and 3 at the transfer of the weapon under a tree near Pandan to DPC 23 depends on the evidence of the DPC. It is supported by the evidence of O/C Detectives in that DPC 23 after bringing back No. 1 and 2 accused under arrest reported to the O/C Detectives that two other men besides accused were involved, one of whom was a habituee of a cigar shop at Pandan, and that No. 2 and 3 accused had run away on the arrest of No. 1 accused.

The detective Sgt. 608, however, does not support DPC 23's story that accused No. 2 and 3 were in company of accused No. 1 when he was arrested by DPC 23, but agrees the DPC told him then two other Indians were involved.

The story of the DPC as to the presence of a taxi just before the arrest is supported by Sgt. 608 but the driver of the taxi is not called.

The report made by DPC 23 and put in as Exhibit makes no mention of two other Indians being involved, but from the wording it can be inferred that two Indians, presumably No. 1 and 2 accused, were under arrest when he made it. It is a most slovenly report and as the two men concerned were under arrest there is no excuse for not making the report in detail and with complete lucidity.

The O/C Detectives gave evidence that Ex. A is unregistered and that none of accused's names are on the register as being licensed under the Arms Enactment to carry or be in possession of a pistol, and that therefore if they are in possession of Ex. A it is an illegal possession.

Accused No. 1 in his statement of defence admits the sale of the pistol to the DPC and the receipt of the money but denies possession of the pistol at any time, and accused No. 2 admits that he brought what turned out to be pistol Ex. A in a bundle to the place where it was handed over to DPC 23 for $300, but denies any knowledge that it was a pistol till he saw the bundle opened. No. 3 accused denies that he was present when the pistol was handed over to DPC 23 and seeks to prove an alibi.

I have no hesitation in rejecting the alibi which is not supported by his witness Gopal as to time, and it is significant that though he states he was in Johore Bahru till 5.30 p.m. on the day in question in Jalan Trus, he calls only evidence to cover the period from 9 to 10 a.m. in Jalan Lumba Kuda and leaves unexplained why he calls no one who saw him in Johore Bahru between 10 a.m. and 5.30 p.m.

On the evidence as a whole I accept the DPC's story that at noon when he received the pistol from No. 1 at Pandan accused No. 2 and 3 were present. It remains to decide what, if any offence, all or any of them have committed.

The evidence shows that accused No. 2 admittedly conveyed the pistol to the scene. In making his plea to the charge he said he got the bundle from a blue car, but in his statement in defence from the dock he says it was from a place in the kampong. It is clear, therefore, that for a certain time the pistol Ex. A was in the actual physical possession of accused No. 2, whether he knew it or not. He says he did not know it and the evidence of DPC 23 is to the effect

that it was concealed in a bundle which No. 2 carried. There is no evidence except an opinion by the DPC 23 that accused No. 2 knew the contents of the bundle he carried, and it is, I think, indisputable that in order to make possession of anything criminal there must be consciousness on the part of the accused that he is in possession of the prohibited article, unless it is explicitly stated that mere possession without knowledge is an offence. The only other evidence showing a connection between No. 2 accused and the pistol is that of handing it over to accused No. 3. I cannot take this as possession of a pistol as envisaged by section 3 of the Ordinance No. 28 of 1946: it is rather in the nature of handling than being in possession and is of so remote and fleeting a nature as to preclude the idea of criminality.

For these reasons I am of the opinion that, if accused No. 2 was at any time in possession of the pistol Ex. A, it was such possession as the ass has of the saddle and not criminal.

The evidence of possession in regard to No. 3 accused is solely that of DPC 23 that No. 2 handed the pistol to No. 3 accused who at once handed it to the DPC, received it back from him and again at once handed it to accuse No. 1. Again in my opinion this "possession" is so remote from the intention of the intention of the Ordinance and so fleeting that it should be considered rather as handling than possession and cannot import any criminality. One may wonder what accused No. 3 was doing at the scene and how he was implicated, but the charge against him is unlawful possession and there is no evidence of that which touches him.

As to No. 1 accused the evidence of his connection with the pistol is far more abundant than in the case of the other two accused. There is reliable evidence that he negotiated for the sale of Ex. A, arranged for its production at the scene of the delivery, handled the weapon there, delivered it to DPC 23 and received from him $300 which he kept exclusively to himself as the price thereof. From this may it properly be inferred that he was in possession of the pistol Ex. A and that his handling of it was in a different capacity to that of the other two accused? I think it may.

Stroud's Judicial Dictionary defines possession *qua* the Criminal Law and Offences against Property as follows:—

> A moveable thing is said to be in possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.

Again custody is defined by the same author in these words:—

> Custody or possession....includes knowingly and wilfully having a thing in any field or other place, whether belonging to or occupied by him or not and whether such thing shall be so had for his own use or benefit or for that of any person.

Adopting these definitions, it is clear that accused No. 1 was so situated with respect to Ex. A that he had the power to deal with it as owner by negotiating a sale of it, and that the circumstances were such that he actually did so and delivered it himself to the purchaser: it is clear that accused No. 1, though he did not have actual physical possession, had control of the means of producing the weapon when required and disposing of it. From this it would seem an inescapable conclusion that the possession of Ex. A on 26-10-46 was in accused No. 1.

The prosecution has proved that the possession was unlawful.

I therefore find No. 1 accused guilty of the offence charged under section 3 Ordinance 28/46 and No. 2 and No. 3 not guilty.

I acquit No. 2 and 3 of this charge.

The maximum penalty for this offence is 10 years imprisonment or fine of $10,000 or both. The offence is, in these days, so serious a one that the legislature has passed this enactment especially to increase the punishment therefor. The accused is a man of sufficient education and experience to be well aware of the fact that an unregistered pistol sold in this way can only be purchased for an illegal and improper purpose and in all probability to be used for the committing of an offence of intimidation, robbery, murder or some such crime of the greatest heinousness. There can be no other explanation of the clandestine purchase of an unlicensed pistol than that it is required for an evil purpose by the purchaser or for helping on such a purpose.

The accused has no previous convictions and in view of that I sentence him to what is generally accepted as the correct term for a first offence, namely one-third of the maximum sentence. He will go to prison with R.I. for 3 years from date of his arrest.

Sentence Accordingly.

VELUMAILUM v. PUBLIC PROSECUTOR.

[Criminal Revision (Laville, J.) February 15, 1947]

Penal Code, Section 199 — False statement made in any declaration which is by law receivable as evidence — Statutory Declarations Enactment — Omission in declaration of words "and by virtue of the Statutory